

**REMARKS**

The Office Action mailed from the U.S. Patent Office on January 4, 2006, has been reviewed and the Examiner's comments carefully considered. Prior to this paper, claims 1-19 were pending, with claims 17-19 being withdrawn. By this paper, Applicant cancels claim 1, and does not add any claims. Therefore, claims 2-19 are now pending.

Applicant respectfully submits that the present application is in condition for allowance for at least the reasons that follow.

**Indication of Allowable Subject Matter**

Applicant thank Examiner To for the indication that claims 2-7 and 12 contain allowable subject matter. Applicants have accordingly placed claim 2 into independent form.

**Rejections Under 35 U.S.C. § 102**

Claims 1, 8-11, 13 and 14 stand rejected under 35 U.S.C. §102(b) as being anticipated by Labuhn (United States Patent No. 5,454,442). In response, in order to advance prosecution, and without prejudice or disclaimer, Applicant has cancelled claim 1 and moved the language of claim 1 into claims 2 and 8 to place claims 2 and 8 into independent form. Applicants have also amended the dependency of claim 14 to depend from claim 2. As claim 2 is indicated as containing allowable subject matter, it is respectfully submitted that the rejection of claim 14 is now moot.

Regarding claims 8-11 and 13, Applicant respectfully traverses the rejection of these claims, and submits that the above claims are allowable for at least the reasons that follow.

Applicant relies on MPEP § 2131, entitled “Anticipation – Application of 35 U.S.C. 102(a), (b), and (e),” which states that a “claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” Section 103 amplifies the meaning of this anticipation standard by pointing out that anticipation requires that the claimed subject matter must be “*identically* disclosed or described” by the prior art reference. (Emphasis added.) It is respectfully submitted that Labuhn does not describe each and every element of claim 8, and thus does not describe each and every element of the claims that depend therefrom.

Claim 8 recites a preceding-vehicle following control system, including a controller arranged to, among other things, “set a *target inter-vehicle distance* according to the road width indicative information in the execution of” following control. In an exemplary embodiment of the invention of claim 8, a distance desired to be maintained between a host vehicle and a vehicle that the host vehicle is following is set on the basis of the width of the road (*e.g.*, number of lanes) on which the host vehicle is driving.

Labuhn does not teach, either explicitly or implicitly, the above identified feature of claim 8. The Office Action cites column 3, lines 57-62 of Labuhn as teaching the recitations of claim 8. This is not the case. All that is taught here is how to calibrate the maximum useful “RANGE” of the radar. In Labuhn, the maximum useful “RANGE” of the radar is the distance from the source vehicle just before the point at which a radar “beam would propagate outside the traffic lane of the source vehicle.” Because a radar beam propagates in a cone-shaped manner (assumed to be 10 degrees in the example detailed in Labuhn), the width of the traffic lane in which the source vehicle is located thus determines the distance at which the radar beam will first propagate into the adjacent lanes (the wider the lane, the greater the distance, due to geometry), and thus “detect” cars in other lanes. Labuhn utilizes this distance in order to limit the RANGE of the radar so that cars in other lanes will not influence his system. That is all. Thus, far from utilizing a road width to set a target inter-vehicle distance,

Labuhn merely teaches utilizing a lane width to determine the useful maximum “RANGE” of his system.<sup>1</sup>

In sum, claim 8 is not anticipated by Labuhn, and thus no claim that depends therefrom (*e.g.*, rejected claims 9-11 and 13) is anticipated.

### **Claim Rejections Under 35 U.S.C. §103(a)**

In the Office Action, Claims 15 and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Labuhn in view of Takenaga (U.S. Patent Publication No. 200301054578).

In response, in order to advance prosecution, and without prejudice or disclaimer, Applicant has amended claims 15 and 16 to depend from claim 2, a claim indicated as containing allowable subject matter. Applicant respectfully submits that the rejection of claims 15 and 16 is now moot in view of the above amendments.

### **Rejoinder of Claims 8-11**

Claims 17-19 stand withdrawn, and are hereby amended to harmonize these claims with claim 2. Applicant respectfully requests that these claims be rejoined and allowed, as these claims are allowable for at least the same reasons that make claim 2 allowable. Applicant submits that no great burden would be placed on the PTO in rejoining and allowing these claims, as no further examination is necessary.

Further, claim 18 is a method claims. Pursuant to MPEP § 821.04 and *In re Ochiai*, 71 F.3d 1565 37 USPQ2d 1127 (Fed. Cir. 1995), it is respectfully requested that this claim be rejoined and considered.

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<sup>1</sup> The closest that Labuhn comes to teaching setting a target inter-vehicle distance is at column 5, lines 4-6, where he provides a definition of determining a desired following distance  $D_D$  as the sum of  $D_{alert}$  and a constant value (13 meters).  $D_{alert}$  is defined at the bottom of column 4, and is a function of an actual speed of the

Also, claim 19 parallels claim 2, except that it utilizes means-plus-function language.

### **Conclusion**

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petitions for such extension under 37 C.F.R. § 1.136 and authorizes payment of any such extensions fees to Deposit Account No. 19-0741.

Examiner To is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application

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source vehicle,  $V_s$ , vehicle deceleration constants  $K_1$  and  $K_2$ , and a driver reaction time  $T_r$ . Thus,  $D_{\text{alert}}$  does not take into account even a lane width.

Respectfully submitted,

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